

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ROQUE ARANDA TERCERO,**

**Petitioner,**

**v.**

**Case No. 11-cv-1035 JCH/SMV**

**KENNETH J. GONZALES,  
JANET NAPOLITANO,  
ADRIAN MACIAS, and RAY TERRY,**

**Respondents.**

**ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL AND  
RESERVING RULING ON MOTION FOR EVIDENTIARY HEARING**

**THIS MATTER** is before the Court on Petitioner's Motion for Appointment of Counsel [Doc. 4] and on Petitioner's Motion for Evidentiary Hearing [Doc. 5]. Because Petitioner is adequately presenting his claims, the Court finds that the Motion for Counsel is not well-taken and will be denied. The Court reserves ruling on Petitioner's requests for an evidentiary hearing until the merits of the Petition are addressed.

There is no constitutional right to counsel in habeas proceedings. *See Coronado v. Ward*, 517 F.3d 1212, 1218 (10th Cir. 2008). Instead, whether to appoint of counsel is a matter left to the discretion of the court. *Swazo v. Wyo. Dep't of Corr.*, 23 F.3d 332, 333 (10th Cir. 1994). In so deciding, courts should consider "the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims." *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991)). Ultimately, the burden is on the petitioner "to

convince the court that there is sufficient merit to his claim to warrant appointment of counsel.” *Hill v. Smithkline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir 2004). This he has failed to do.

In the instant motion, Petitioner simply requests appointment of counsel and an award of attorney’s fees and costs. He identifies no reason why he requires counsel. After thoroughly reviewing the pleadings and the motion, the Court finds that Petitioner is adequately presenting his claims at this time.

Petitioner further requests an evidentiary hearing and that a certain witness be required to testify. The Court reserves ruling on the Petitioner’s request for an evidentiary hearing at this time.

**IT IS THEREFORE ORDERED** that Petitioner’s Motion for Appointment of Counsel [Doc. 4] ] is **DENIED**.

**IT IS FURTHER ORDERED** that ruling is **RESERVED** on Petitioner’s Motion for Evidentiary Hearing [Doc. 5].

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'S. Vidmar', is written over a horizontal line.

**STEPHAN M. VIDMAR**  
United States Magistrate Judge